

ESTTA Tracking number: **ESTTA776421**

Filing date: **10/13/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Proximo Spirits, Inc.
Granted to Date of previous extension	10/19/2016
Address	333 Washington Street Jersey City, NJ 07302 UNITED STATES
Attorney information	Erica R. Halstead ABELMAN, FRAYNE & SCHWAB 666 THIRD AVE. NEW YORK, NY 10017 UNITED STATES EHALSTEAD@LAWABEL.COM, docket@lawabel.com Phone:2129499022

### Applicant Information

Application No	86844126	Publication date	06/21/2016
Opposition Filing Date	10/13/2016	Opposition Period Ends	10/19/2016
Applicant	Etheridge, Benjamin C. 15591 77th place north loxahatchee, FL 33470 UNITED STATES		

### Goods/Services Affected by Opposition


Class 033. First Use: 2013/10/01 First Use In Commerce: 2013/10/01  
All goods and services in the class are opposed, namely: Rum

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
--------------------------------------	----------------------------

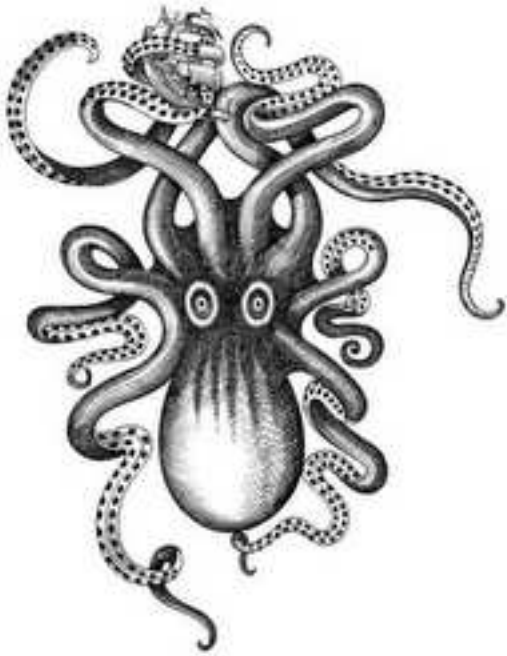
### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3820616	Application Date	07/21/2009
Registration Date	07/20/2010	Foreign Priority Date	NONE
Word Mark	THE KRAKEN		


Design Mark	
Description of Mark	The mark consists of the words "THE KRAKEN" appearing within a shield, a representation of a sea monster similar to a giant squid, and a three-masted ship in the monster's tentacles.
Goods/Services	Class 033. First use: First Use: 2009/08/01 First Use In Commerce: 2009/08/01 Rum


U.S. Registration No.	3878786	Application Date	11/04/2009
Registration Date	11/23/2010	Foreign Priority Date	NONE
Word Mark	THE KRAKEN THE KRAKEN BLACK SPICED RUM		
Design Mark			

Description of Mark	The mark consists of a three-dimensional, capped glass bottle with the literal element "THE KRAKEN", appearing directly on the bottle in raised lettering, and the literal elements "THE KRAKEN BLACK SPICED RUM" in stylized lettering with associated design element appearing on a label across the bottom based of the bottle. The bottle cap appears in black, the glass bottle appears in clear light brown, with the color of brown liquid is showing through the glass bottle. The label appears in beige and contains a fanciful representation of a kraken, or sea monster, which appears in the colors beige and brown, and a black shield with three separate gray border designs and containing the words "THE KRAKEN BLACK SPICED RUM" in the color white in its interior.
Goods/Services	Class 033. First use: First Use: 2009/08/01 First Use In Commerce: 2009/08/01 Rum

U.S. Application No.	87194023	Application Date	10/05/2016
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of a representation of a sea monster similar to a giant squid, and a three-masted ship in the monster's tentacles.		
Goods/Services	Class 033. First use: First Use: 2009/08/01 First Use In Commerce: 2009/08/01 Rum		

U.S. Registration No.	3741146	Application Date	04/16/2008
Registration Date	01/19/2010	Foreign Priority Date	NONE
Word Mark	KRAKEN		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2009/08/01 First Use In Commerce: 2009/08/01 Rum

U.S. Application No.	86424964	Application Date	10/15/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	KRAKEN BEAST		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 0 First Use In Commerce: 0 Rum		

U.S. Registration No.	4068154	Application Date	06/15/2010
Registration Date	12/06/2011	Foreign Priority Date	NONE
Word Mark	RELEASE THE KRAKEN		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2011/09/19 First Use In Commerce: 2011/09/19 Rum

U.S. Registration No.	3585895	Application Date	05/05/2008
Registration Date	03/10/2009	Foreign Priority Date	NONE

Word Mark	KRAKEN
-----------	--------

Design Mark	
-------------	--

Description of Mark	NONE
---------------------	------

Goods/Services	Class 032. First use: First Use: 2005/02/04 First Use In Commerce: 2005/02/04 Malt liquor
----------------	---

U.S. Registration No.	4355033	Application Date	03/16/2012
Registration Date	06/18/2013	Foreign Priority Date	NONE

Word Mark	KRAKEN
-----------	--------

Design Mark	
-------------	--

Description of Mark	NONE
---------------------	------

Goods/Services	Class 032. First use: First Use: 2012/11/01 First Use In Commerce: 2012/11/01 Non-alcoholic cocktail mix; beer; non-alcoholic malt beverages; flavored brewed-malt beverages; alcoholic malt beverages
----------------	--

Attachments	77786210#TMSN.png( bytes ) 77865216#TMSN.png( bytes ) 87194023#TMSN.png( bytes ) 77978366#TMSN.png( bytes ) 86424964#TMSN.png( bytes ) 85063419#TMSN.png( bytes ) 77466187#TMSN.png( bytes ) 85572320#TMSN.png( bytes ) KRAKEN v BLACK CORAL RUM.pdf(165015 bytes )
-------------	---

---

---

## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/erh/
Name	Erica R. Halstead
Date	10/13/2016

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application No. 86/844126

PROXIMO SPIRITS, INC.,

Opposer,

v.

BENJAMIN C. ETHERIDGE,

Applicant

Opposition No.

**NOTICE OF OPPOSITION**

Proximo Spirits, Inc. (“Opposer”), a corporation of Delaware with a business address at 333 Washington Street, Jersey City, NJ 07302, USA, believes that it will be damaged by registration of the above identified trademark and hereby opposes the same.

As grounds for opposition it is alleged that:

1. On December 9, 2015, Benjamin C. Etheridge (“Applicant”), an individual with a business address at 15591 77<sup>th</sup> Pl. North, Loxahatchee, FL, 33470 USA, filed an application seeking



registration of the mark (“Applicant’s Mark”) for rum. This application, assigned Serial No. 86/844126, claims a first commercial use date of October 1, 2013.

2. Opposer owns the following Design Marks in the United States:



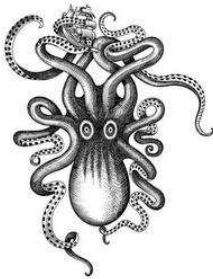
Reg. No. 3820616

“rum” in Cl. 33



Reg. No. 3878786

“rum” in Cl. 33



Ser. No. 87/194023

“rum” in Cl. 33

(collectively referred to as “Opposer’s Design Marks”).

4. Opposer first used Opposer’s Design Marks in United States commerce in connection with rum since at least as early as 2009.

5. The first commercial use of Opposer’s Design Marks predates both the filing date of Applicant’s Mark as well as Applicant’s claimed date of first use in commerce.

6. Opposer’s Design Marks contain the design of a KRAKEN.

7. A KRAKEN is a legendary sea creature of giant size and nearly identical to a squid or an octopus.

8. Applicant’s Mark contains the design of an octopus.



9. Applicant's Mark is substantially similar in appearance to Opposer's Design Marks.

10. Opposer's Reg. No. 3878786 contains a claim to the colors black, light brown, brown, beige, gray and white. Specifically, the "Kraken" design is to be used in the colors beige and brown.

11. Applicant's Mark contains a claim to the colors black, brown, gold and tan.

12. Applicant's Mark will be used in the same or similar colors as Opposer's Design Marks.

13. Applicant's Mark conveys an overall commercial impression that is similar to that conveyed by Opposer's Design Marks.

14. Opposer's Design Marks cover rum.

15. Applicant's Mark covers rum.

16. The Parties' respective goods are identical.

17. Because the Parties' respective goods are identical, they will be marketed through the same or similar retail outlets.

18. Because the Parties' respective goods are identical, they will be marketed to the same or similar consumers.

19. Opposer owns the following wordmarks in the United States:

KRAKEN	Reg. No. 3741146	"rum" in Cl. 33
KRAKEN BEAST	Ser. No. 86/424964	"rum" in Cl. 33
RELEASE THE KRAKEN	Reg. No. 4068154	"rum" in Cl. 33
KRAKEN	Reg. No. 3585895	"malt liquor" in Cl. 32

KRAKEN

Reg. No. 4355033

“non-alcoholic cocktail mix;  
beer; non-alcoholic malt  
beverages; flavored brewed  
malt beverages; alcoholic  
malt beverages” in Cl. 32

(collectively referred to as “Opposer’s KRAKEN Marks”).

20. Opposer first used the mark KRAKEN in United States commerce in connection with malt liquor since at least as early as 2005.

21. The first commercial use of Opposer’s KRAKEN Mark for malt liquor predates both the filing date of Applicant’s Mark as well as Applicant’s claimed date of first use in commerce.

22. Opposer first used the mark KRAKEN in United States commerce in connection with rum since at least as early as 2009.

23. The first commercial use of Opposer’s KRAKEN Mark for rum predates both the filing date of Applicant’s Mark as well as Applicant’s claimed date of first use in commerce.

24. Opposer first used the mark KRAKEN in United States commerce in connection with beer and alcoholic malt beverages since at least as early as 2012.

25. The first commercial use of Opposer’s KRAKEN Mark for beer and alcoholic malt beverages predates both the filing date of Applicant’s Mark as well as Applicant’s claimed date of first use in commerce.

26. Because a KRAKEN is a legendary squid or octopus, Opposer’s KRAKEN Marks connote the image of a squid or octopus in the minds of consumers.

27. Applicant’s Mark conveys an overall commercial impression that is similar to that conveyed by Opposer’s KRAKEN Marks.

28. Opposer's KRAKEN Marks cover "rum, malt liquor, beer and alcoholic malt beverages."

29. The goods covered by Opposer's KRAKEN Marks are identical to and/or commercially related to Applicant's goods, namely "rum."

30. Because the Parties' respective goods are identical and/or commercially related, they will be marketed through the same or similar retail outlets.

31. Because the Parties' respective goods are identical and/or commercially related, they will be marketed to the same or similar consumers.

32. Opposer owns and operates the website [www.krakenrum.com](http://www.krakenrum.com). This site provides a brief history of the KRAKEN as well as links to films featuring the KRAKEN and a supply shop to order KRAKEN merchandise. It also provides information on the "League of Darkness," a KRAKEN fanclub.

33. By virtue of the distribution, sale, advertising and promotion of products bearing Opposer's Design Marks and Opposer's KRAKEN Marks, they are widely recognized by the purchasing public as identifying Opposer and its goods.

34. Applicant's Mark is confusingly similar to Opposer's Design Marks and Opposer's KRAKEN Marks.

35. Accordingly, use and registration of Applicant's Mark is likely to deceive and to cause mistake or confusion among members of the public as to the source of Applicant's goods within the meaning of 15 U.S.C. §1052(d).

**WHEREFORE**, Opposer believes that it has a real interest in this proceeding and will be irreparably damaged by the registration of the Applicant's Mark, and respectfully requests that the Board sustain this Opposition and refuse registration of same.

Opposer requests that the requisite filing fee of \$300 be charged to the undersigned's Deposit Account No. 010035-6336.

Respectfully submitted,

s/*Erica R. Halstead* /  
LAWRENCE E. ABELMAN  
ERICA R. HALSTEAD

**ABELMAN, FRAYNE & SCHWAB**  
**666 Third Avenue**  
**New York, New York 10017**  
**(212) 949-9022**  
*Attorneys for Opposer*

Dated: October 13, 2016

#### **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing NOTICE OF OPPOSITION was served via first class mail, postage prepaid, this 13th day of October 2016 upon Applicant:

Benjamin C. Etheridge  
15591 7<sup>th</sup> Place North  
Loxahatchee, FL 33470

s/*Erica Halstead* /  
ERICA R. HALSTEAD